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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,787	09/15/2003	Russell R. Hein	067305.000005	9525

7590 12/06/2004

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EXAMINER


LE, MARK T

ART UNIT PAPER NUMBER

3617

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/662,787	HEIN ET AL.	
	Examiner	Art Unit	
	Mark T. Le	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 and 22-29 is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the amendment papers filed on October 25, 2004. Applicant's amendments and remarks have been carefully considered, but they are deemed moot in view of the new grounds of rejection set forth below. Note that claims 3 and claims 12-18 have been withdrawn from a favorable consideration due to the new grounds of rejection set forth below. Any inconvenience to the applicant and their representative is regretted.

2. Claims 1, 4-6, 8-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartwell (US 559,284) in view of Tuningley (US 5,797,565).

Hartwell discloses a railway crossing similar to that recited in the instant claims, including, as shown in Figures 1 and 2 of Hartwell, a pair of vertical beams A as continuous long beams and a pair of horizontal beams B1, B2, B3 as divided beams.

Regarding the instant claimed mounting plate and fasteners for mounting the beams to the plate, consider fastening means 58 and mounting plate 50 of Tuningley. In view of Tuningley, it would have been obvious to one skilled in the art to substitute a mounting plate along with fasteners, similar to that taught by Tuningley, for the fastening means of Hartwell to provide a more stable support for the components of the railway crossing.

3. Claims 1-6, 9, 12-15 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartwell (US 559,284) in view of Brown (US 1,632,725).

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Hartwell discloses a railway crossing similar to that recited in the instant claims, including, as shown in Figures 1 and 2 of Hartwell, a pair of vertical beams A as continuous long beams and a pair of horizontal beams B1, B2, B3 as divided beams.

Regarding the instant claimed mounting plate and fasteners for mounting the beams to the plate, consider fastening and mounting plate A,B,C,D of Brown. In view of Brown, it would have been obvious to one skilled in the art to substitute a mounting plate along with fasteners, similar to that taught by Brown, for the fastening means of Hartwell to provide a more stable support for the components of the railway crossing.

Regarding the instant claimed protrusions and recesses, recited in instant claims 3 and 12, consider the protrusions in the form of bolts 36 and recesses in the forms of holes 34 of Brown; and Hartwell, as modified, includes such protrusions and recesses as fastening means. Regarding the instant claimed fastener recited, in claim 12, consider the nuts that are fixed at the ends of the bolts 36 of Brown.

4. Claims 1 and 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kopp (US 1,743,924) in view of Hartwell (US 559,284).

Kopp discloses a railway crossing similar to that recited in the instant claims, including rail beams mounted on plate 17 by fastening means 18.

Hartwell discloses a railway crossing similar to that recited in the instant claims, including, as shown in Figures 1 and 2 of Hartwell, a pair of vertical beams A as continuous long beams and a pair of horizontal beams B1, B2, B3 as divided beams.

In view of Hartwell, it would have been obvious to one skilled in the art to form the railway crossing beams of Kopp with a pair of continuous beams and a pair of

discontinuous beams, in a manner similar to that by Hartwell, so as to achieve expected advantages thereof, i.e. greater flexibility in servicing and replacements of the rail crossing components.

Regarding the instant claimed inner segments being shorter than that of the outer segments, consider shorter inner segments 5a and 6a of Kopp.

5. Claims 1, 4-6, 8-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuningley (US 5,797,565) in view of Hartwell (US 559,284).

Tuningley discloses a railway crossing similar to that recited in the instant claims, including rail beams mounted on plate 50 by fastening means 58.

Hartwell discloses a railway crossing similar to that recited in the instant claims, including, as shown in Figures 1 and 2 of Hartwell, a pair of vertical beams A as continuous long beams and a pair of horizontal beams B1, B2, B3 as divided beams.

In view of Hartwell, it would have been obvious to one skilled in the art to form the railway crossing beams of Tuningley with a pair of continuous beams and a pair of discontinuous beams in a manner similar to that by Hartwell so as to achieve expected advantages thereof, i.e. greater flexibility in servicing and replacements of the rail crossing components.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tuningley and Hartwell as applied to claim 1 above, and further in view of Remington (US 6,308,897).

Regarding the instant claimed rail brace assembly, consider the rail brace assembly of Remington, including wedge brace 160, clip 208, and wedge 70. In view of

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Remington, it would have been obvious to one skilled in the art to substitute a rail brace assembly, similar to that taught by Remington, for the fastening means of Tuningley so as to achieve the expected advantages of Remington's structure.

7. Claims 12 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuningley (US 5,797,565) in view of Hartwell (US 559,284) and Brown (US 1,632,725).

Tuningley discloses a railway crossing similar to that recited in the instant claims, including rail beams mounted on plate 50 by fastening means 58.

Hartwell discloses a railway crossing similar to that recited in the instant claims, including, as shown in Figures 1 and 2 of Hartwell, a pair of vertical beams A as continuous long beams and a pair of horizontal beams B1, B2, B3 as divided beams.

In view of Hartwell, it would have been obvious to one skilled in the art to form the railway crossing beams of Tuningley with a pair of continuous beams and a pair of discontinuous beams in a manner similar to that by Hartwell so as to achieve expected advantages thereof, i.e. greater flexibility in servicing and replacements of the rail crossing components.

Regarding the instant claimed mounting plate and fasteners for mounting the beams to the plate, consider fastening and mounting plate A,B,C,D of Brown. In view of Brown, it would have been obvious to one skilled in the art to substitute a mounting plate along with fasteners, similar to that taught by Brown, for the fastening means of Tuningley to provide a more stronger securement for the components of the railway crossing.

Regarding the instant claimed protrusions and recesses, recited in instant claims 3 and 12, consider the protrusions in the form of bolts 36 and recesses in the forms of holes 34 of Brown; and Tuningley, as modified, includes such protrusions and recesses as fastening means. Regarding the instant claimed fastener recited, in claim 12, consider the nuts that are fixed at the ends of the bolts 36 of Brown.

8. Claims 20 and 22-29 are allowable.

9. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 703-308-3663. The examiner can normally be reached on Mon-Fri (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le
Primary Examiner
Art Unit 3617

mle
12/01/04